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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,354	04/20/2004	Michael Burrows	600189.345	2588
61834	7590	01/08/2008		
DREIER LLP 499 PARK AVE NEW YORK, NY 10022			EXAMINER RADTKE, MARK A	
			ART UNIT	PAPER NUMBER
			2165	
			MAIL DATE	DELIVERY MODE
			01/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,354

Applicant(s)

BURROWS, MICHAEL

Examiner

Mark A. X Radtke

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-12 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 October 2007 has been entered.

Remarks

2. In response to communications filed on 27 November 2007, claim(s) 6, 15, 22 and 27 is/are amended per Applicant's request. Therefore, claims 6-12 and 15-27 are presently pending in the application, of which, claim(s) 6, 15, 22 and 27 is/are presented in independent form.

3. Applicant's amendments have necessitated new grounds of rejection. It is noted that in the "Remarks" section on page 8 of the 31 October 2007 filing, it is erroneously stated that the rejections were made under 35 U.S.C. 112, paragraph 6. It is assumed that this is a typographical error, as the rejection was made under 35 U.S.C. 112, second paragraph. This is merely noted to clarify the written record.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6-12 and 15-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "high" in the independent claims is a relative term which renders the claim indefinite. The term "high" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Dependent claims are rejected because they incorporate the subject matter of independent claims without rectifying this problem.

Response to Arguments

6. Applicant's arguments filed on 31 October 2007 with respect to the rejected claims in view of the cited references have been fully considered but are not deemed persuasive.

In response to Applicant's arguments that the new amendments to the claims (e.g., "wherein the low weight is a weight less than a high weight") overcome the

rejection under 35 U.S.C. 112, second paragraph, the arguments have been fully considered but are not deemed persuasive.

Applicant's amendment merely defines one relative term ("low") in terms of another equally vague and relative term ("high"). Neither the claims nor the specification provide an explicit or implicit definition of "low" or "high". Applicant is directed towards MPEP 2173.05(b). "Even if the specification uses the same term of degree as in the claim, a rejection may be proper if the scope of the term is not understood when read in light of the specification." The MPEP lists several examples from case law regarding terms of degree. Although "low" and "high" are not specifically addressed, the example of "relatively shallow" provides support for the Examiner's position (op. cit., section F "Other Terms"). One of ordinary skill in the art would not know what threshold to use to determine the "high"-ness of a score, so that artisan would be unable to build a machine to carry out the steps.

Applicant's argument that "one of ordinary skill in the relevant art would readily identify if a score is low score [sic] or a high score" is incorrect. In the art of computer programming, there is no special meaning assigned to the words "low" and "high", and one of ordinary skill in the art would have to guess at a threshold for determining what constitutes a "high" weight. Without a fixed point of reference (i.e., a threshold for "low"-ness), the determination of whether a score is high or low cannot occur. Furthermore, it is noted that one of ordinary skill in the art would be aware that "high" is "higher than" "low", but the point is moot.


It is noted that the instant claims use similar language to "high" and "low" in a definite manner. The claims refer to "a score that is higher than the score of any of the records already located". This language is not vague or indefinite because it describes a well-defined comparison (the "greater than" operator, ">") that would be understood by one of ordinary skill in the art of computer programming. There is no "guessing" required to implement such a comparison. Applicant's "low" language would require the comparison of two numbers, but one of these numbers is undefined (i.e., the threshold under which a number is considered "low").

Conclusion

7. Any inquiry concerning this communication or earlier communications should be directed to the examiner, Mark A. Radtke. The examiner's telephone number is (571) 272-7163, and the examiner can normally be reached between 9 AM and 5 PM, Monday through Friday. If attempts to contact the examiner are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at (571) 272-4146. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (800) 786-9199.

maxr

4 January 2008


CHRISTIAN CHACE
SUPERVISORY PATENT EXAMINER
TECHNICAL STAFF 2100